



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 21, 2022

IN THE MATTER OF:

Appeal Board No. 622130

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination reducing the claimant's right to receive future benefits by 192 effective days and charging a civil penalty of \$7,474.50 on the basis that the claimant made willful misrepresentations to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 17, 2022 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant had worked two full-time jobs. She lost one of her jobs due to the COVID-19 pandemic, but she continued to work at her full-time job as a home health aide. From the week ending April 6, 2020 through the week ending August 15, 2021, the claimant worked 40 hours, five days per week and earned \$508.00 per week.

The claimant filed a claim for benefits on July 12, 2020. She had access to a claimant information handbook. The claimant completed a questionnaire from the Department of Labor to certify for benefits for the weeks ending March 29,

2020, April 5, 2020, April 12, 2020, April 19, 2020, April 26, 2020, May 3, 2020, May 10, 2020, May 17, 2020, May 24, 2020, and May 31, 2020. The questionnaire asked her whether she was eligible for benefits for those weeks. The form stated that by checking the box indicating she was eligible for each of those weeks she was certifying that she did not work any day, including self-employment, during the week. The claimant stated that she was eligible for those weeks.

The claimant certified online for each of the weeks ending June 14, 2020 through August 15, 2021. The claimant was asked how many days she had worked during the week for which she was certifying. She certified that she had worked zero days. The claimant was also asked if she had earned more than \$504 during the week. She answered "No".

OPINION: The credible evidence establishes that the claimant made willful false statements to obtain benefits. The claimant knew that she was working five days per week for 40 hours per week at a full-time job, but certified that she had worked zero days each week. The claimant contended that she was answering the questions about a different employer. However, the certification questions asked if the claimant had worked and did not ask if she had worked for a specific employer. In addition, the Board has held that the question regarding how many days a claimant had worked is a straightforward question and does not require specialized knowledge to answer. If the claimant had any doubts as to what she read, it was her responsibility to contact the Department of Labor. From the week ending March 29, 2020 through the week ending January 17, 2021, we conclude that her certifications to working zero days during the week when she had worked five days for each of those weeks constitute willful misrepresentations to obtain benefits. Pursuant to Governor's Emergency Rule (Emergency Rule), effective January 18, 2021 through August 15, 2021, a claimant who worked more than 30 hours in each statutory week during this period is not totally unemployed and ineligible for any unemployment compensation benefits during those weeks. As the claimant knew that she had worked 40 hours per week during this period, she was not totally unemployed for four days per week based upon the number of hours the claimant worked each week. As a result, her certifications for each of the weeks ending January 24, 2021 through August 15, 2021 also constitute willful misrepresentation to obtains benefits. As such, the forfeit and monetary penalties were properly imposed.

DECISION: The decision of the Administrative Law Judge, insofar as appealed

from, is reversed.

The initial determination, reducing the claimant's right to receive future benefits by 192 effective days and charging a civil penalty of \$7,474.50 on the basis that the claimant made willful misrepresentations to obtain benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER